# POLICY FOR ACCEPTANCE OF DONATED EASEMENTS

#### CRITERIA FOR ACCEPTING DONATIONS OF CONSERVATION EASEMENTS

# Scope

This policy describes requirements for the acceptance of conservation easement donations by the Rural Land Management Board, including the location of proposed easement donations, solicitation criteria, easement agreement terms, management and financial considerations and potential reasons not to accept a proposed donation. This policy also outlines the proposed administration process for donations to the RLMB.

#### **Location Criteria**

- Land must be located in the Rural Service Area of Fayette County.
- Where possible, the easement should advance and be coordinated with the acquisition of easements in the PDR program and the Rural Land Management Plan.

### **Solicitation Criteria**

- Easement donations will be solicited:
  - In areas in which a critical mass of conservation easements are assembled or is likely to be assembled.
  - On land comprising a viewshed for the region's connecting roads, trails or lands open to the general public or waterways.
  - In important watersheds, including both groundwater and surface water resources.
  - On lands designated by local, state and federal conservation, preservation, open space and recreation plans and policies.
  - On properties listed or eligible for listing on the National Register of Historic Places and adjacent lands necessary for protection of the historic interest.

- On sites containing rare, threatened or endangered species or habitats; or possessing unique natural characteristics or resources that warrant protection.

#### **Easement Terms**

- The donation of a conservation easement is treated as a tax-deductible charitable contribution if it meets the "qualified conservation contribution" requirements of the Internal Revenue Service Code, Section 170(h) and Treas. Reg. § 1.170A-14. A "qualified" easement must be granted in perpetuity and contributed exclusively for at least one of the four conservation purposes described in the regulations and outlined below.
  - The preservation of land areas for recreation by, or the education of, the general public, provided such access is for substantial and regular use;
  - The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem;
  - The preservation of open space (including farmland and forest land) when pursuant to a clearly delineated government conservation policy or for the scenic enjoyment, but not the public access, of the general public. In both cases such open space preservation must yield a significant public benefit; or
  - The preservation of a historically important land area or a certified historic structure. IRC Section 170(h)
- Easements must be donated through a legally binding agreement that is perpetual and enforceable.
- Easements should be consistent with local zoning, the Rural Land Management Plan, and the terms of easements purchased by the Rural Land Management Board.
- Easement terms should protect the conservation resources of a property and the conservation values for which the easement is donated. A conservation plan and agricultural water quality plan must be submitted with the application.
- Easements should preserve the agricultural viability of the parcel, with owner <u>having the option of retaining 40-acre development rights or</u> agreeing not to subdivide an agricultural parcel into divisions of less than 40 acres, if the parcel is greater 40 acres in size.

- Easements should limit the management and enforcement burdens on the Rural Land Management Board and Staff (for example, limiting the number of subdivisions and therefore the number of owners of the eased parcels).
- Donor of eased land must have good marketable fee simple title to the parcel of land upon which the conservation easement is proposed to be donated.

# **Management/Financial Considerations**

- Each easement must be evaluated such that the benefits are greater than the burden imposed on the Rural Land Management Board and staff.
- Sufficient financial resources must be dedicated to cover the costs of preparation, management and enforcement of the easement in amounts approved by the Board keeping in mind that the donation is made in perpetuity. Costs will include:
  - Easement preparation and review.
  - Site counseling and planning.
  - Detailed site survey and documentation of condition.
  - Long term monitoring and enforcement.
- Sufficient staffing resources are available given:
  - The complexity of the easement terms and the legal issues that may arise.
  - The location of the eased property and distance from other managed properties.
  - Potential Internal Revenue Service review.

## **Potential Reasons Not to Accept a Donation**

- Adjacent properties are being developed in a manner that is likely to significantly diminish the conservation values of the eased land.
- Easement terms requested by the donor would diminish the conservation value of the eased land.
- The easement would be unusually difficult to enforce because of multiple or fractional ownership, irregular configuration, etc.
- Another group is more qualified to hold the easement.

<sup>&</sup>lt;sup>1</sup> For easements to qualify as charitable donations, the tax code requires the holding organization to have sufficient resources to enforce the easement restrictions. IRS Regs. Section 170A-14 ( c )(1).

#### **Easement Donation Process**

- 1, Initial contact between Landowner and PDR Staff.
- 2. Landowner completes PDR application.

Pursuant to section 26-16 of the PDR ordinance Landowner must provide deed reference, map of property and other requested information. No application fee required.

- 3. PDR staff review application and visits property. Section 26-16(3)
- 4. Staff evaluation of property.

<u>Staff may or may not</u> determine the number of points the property would receive if it was a proposed purchase.

Staff should also consider whether the eased land will remain in a relatively open and natural state such that meaningful conservation resources will be maintained intact or land will serve as a buffer area for other lands with conservation values.

Staff should also consider whether a conservation easement is the most appropriate method to protect the conservation interests of the property.

- 5. Staff provides a report to RLMB re proposed donation and makes a recommendation to RLMB whether or not to proceed with the donation. RLMB decides whether or not to proceed with proposed donation. Section 26-16 (3) and (4).
- 6. Model easement agreement is sent to Landowner.
- 7. Easement agreement must conform to IRS requirements.
- 8. Easement agreement is reviewed by landowner and finalized. Mortgage subordination is obtained by landowner if necessary. All liens must be subordinated or released at landowner's expense.
- 9. RLMB reviews, approves and authorizes Board chair to sign final easement agreement and subordination agreement if applicable.

- 10. Title search is conducted by RLMB's legal counsel at RLMB's cost. Section 26-16(5) and 26-15(1)
- 11. Easement is signed and recorded. Section 26-16(5) and 26-15(1). RLMB pays recording fee.
- 12. Other government agencies are notified of donation and location of parcel. Section 26-16(5)
- 13. Landowner obtains appraisal at his or her own cost.